[2024] 2 S.C.R. 409 : 2024 INSC 126

Manoj Kumar
v.
Union of India & Ors.

(Civil Appeal No. 2679 of 2024)

20 February 2024

[Pamidighantam Sri Narasimha* and Sandeep Mehta, JJ.]

Issue for Consideration

The appellant sought appointment as a primary school teacher. The issue arising for consideration in the present case relates the allocation of marks for additional qualifications, for which 10 marks had been prescribed.

Headnotes

Service Law – Recruitment – Allocation of marks for additional qualifications – An Institute issued an advertisement in March 2016 calling applications for appointment to the post of primary school teachers – For the allocation of marks, additional qualifications 10 marks had been prescribed – The appellant herein is aggrieved by the denial of 6 marks for the additional qualification of PG Degree that he held, on the ground that his PG Degree was not "in the relevant subject" – Propriety:

Held: It is evident from the record that a candidate possessing a Post Graduate Diploma and a Post Graduate Degree would be entitled to allocation of 5 and 6 marks respectively for their additional qualification – However, a person possessing an MPhil degree or a professional qualification in the field would be entitled to allocation of 7 marks for their additional qualification – The additional qualifications provided under clauses 'a' to 'd' are under two categories – While 'a', 'b', and 'd' relating to PG Diploma, PG Degree, and PhD are general qualifications providing for 5, 6, and 10 marks respectively, the category under 'c' relates to Professional Qualification in the field – This is where specialization is prescribed – If one adds the requirement of specialization to category 'b', i.e., PG Degree, then that category becomes redundant – The whole purpose of providing PG Degree independently and allocating a lesser quantum of 6 marks will be completely lost if such an interpretation is adopted – This can never be the purpose of prescribing distinct categories

* Author

– The Single Judge as well as the Division Bench of the High Court did not really analyse the prescription of additional qualifications and the distinct marks allocated to each of them, but confined their decision to restraint in judicial review and dismissed the appellant's prayer – When a citizen alleges arbitrariness in executive action, the High Court must examine the issue, of course, within the context of judicial restraint in academic matters – While respecting flexibility in executive functioning, courts must not let arbitrary action pass through – For the reasons stated, this Court is of the opinion that the decisions of the Single Judge and the Division Bench are not sustainable. [Paras 12, 13]

Administration of Justice – Primary duty of constitutional courts – Addressing injurious consequences arising from arbitrary and illegal administrative actions:

Held: While the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power – It is equally incumbent upon the courts, as a secondary measure, to address – The injurious consequences arising from arbitrary and illegal actions – This concomitant duty to take reasonable measures to restitute the injured is overarching constitutional purpose – This is how one has to read constitutional text – In public law proceedings, when it is realised that the prayer in the writ petition is unattainable due to passage of time, constitutional courts may not dismiss the writ proceedings on the ground of their perceived futility – In the life of litigation, passage of time can stand both as an ally and adversary – It is the duty of the Court to transcend the constraints of time and perform the primary duty of a constitutional court to control and regulate the exercise of power or arbitrary action – By taking the first step, the primary purpose and object of public law proceedings will be subserved. [Paras 19, 20]

Administration of Justice – Restitution of the wrongful action – discussed.

Administration of Justice – Alternative restitutory measure – Monetary compensation:

Held: In the instant case, in exercise of primary duty, the action of the respondents are set aside as being illegal and arbitrary – In furtherance of duty to provide a reasonable measure for restitution,

the possibility was explored of directing the Institute to appoint the appellant as a primary teacher in any other school run by them – However, it seems that the only primary school run by the Institute is the one for which they sought to fill vacancies and it is closed since 2023 – In this situation, an alternative restitutory measure in the form of monetary compensation is considered – Thus, the Institute (respondent no. 2) is directed to pay an amount of Rs. 1,00,000/- as compensation. [Paras 25 and 26]

Case Law Cited

University Grants Commission v. Neha Anil Bobde, **[2013] 9 SCR 521 : (2013) 10 SCC 519**; *Tamil Nadu Education Department Ministerial and General Subordinate Services Association v. State of Tamil Nadu,* **[1980] 1 SCR 1026 : (1980) 3 SCC 97***; All India Council for Technical Education v. Surinder Kumar Dhawan,* **[2009] 3 SCR 859 : (2009) 11 SCC 726 – referred to.**

Books and Periodicals Cited

Sir Clive Lewis, *Judicial Remedies in Public Law (5th edn, Sweet and Maxwell 2015);* **HWR Wade and CF Forsyth,** *Administrative Law (11th edn, Oxford University Press 2014) 596-597;* **Peter Cane,** *'Damages in Public Law' (1999) 9(3) Otago Law Review 489;* **Henry Woolf and others,** *De Smith's Judicial Review (8th edn, Sweet and Maxwell 2018) 1026-1027.*

List of Keywords

Service Law; Recruitment; Allocation of marks for additional qualifications; Arbitrariness in executive action; Judicial review; Academic matters; Judicial restraints; Administration of Justice; Primary duty of constitutional courts; Transcending constraints of time; Control and regulation of the arbitrary action; Restitution of the wrongful action; Alternative restitutory measure; Monetary compensation.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2679 of 2024

From the Judgment and Order dated 16.10.2018 of the High Court of Delhi at New Delhi in LPA No. 158 of 2018

Appearances for Parties

Ranjit Kumar Sharma, Adv. for the Appellant.

K. M. Nataraj, A.S.G., Amrish Kumar, Shailesh Madiyal, Navanjay Mahapatra, Apoorv Kurup, T.A. Khan, T.S. Sabarish, Arun Kanwa, Purnendu Bajpai, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Leave granted.

2. This appeal is by the appellant seeking appointment as a primary school teacher. He is aggrieved by the judgment of the Division Bench of the High Court of Delhi dismissing the writ appeal,[1] which was filed against the order of the Single Judge dismissing his writ petition.[2]

3. Pt. Deendayal Upadhyaya Institute for the Physically Handicapped, hereinafter referred to as the 'Institute', issued an advertisement in March 2016 calling applications for appointment to the post of primary school teachers. The vacancy circular issued for this purpose provided the qualifications and the procedure for selection. The basic qualification was senior secondary with a two-year diploma or certificate course in ETE/JBT or B.EI.Ed. The candidates were required to have passed the secondary level with Hindi as a subject. The final selection was to be made after conducting an interview of qualified candidates. The Institute reserved its right to evaluate, review the process of selection, and shortlist candidates at any stage, and its decision would be final and binding. This discretionary power is notified under Clauses 14 and 19 of the vacancy circular. The relevant clauses relied on by the Institute are as follows:

> "*14. Decision of the institute in all matters regarding eligibility of the candidate, the stages at which such scrutiny of eligibility is to be undertaken, the documents to be produced for the purpose of conduct of interview, selection and any other matter relating to recruitment will*

1 L.P.A. No. 158/2018 dated 16.10.2018.

2 W.P. (C) No. 5279/2017 and C.M. 22382/2017 dated 24.01.2018.

be final and binding on the candidate. Further, the institute reserves the right to stall/ cancel the recruitment partially/ fully at any stage during the recruitment process at its discretion, which will be final and binding on the candidate.

19. Fulfilment of conditions of minimum qualification shall not necessarily entitle any applicant to be called for further process of recruitment, in case of large number of applications, Institute reserves the right to short-list applications in any manner as may be considered appropriate and no reason for rejection shall be communicated and no claim for refund of fee shall be entertained in any case."

4. On 27.04.2016, the Institute deviated from the procedure prescribed in the original advertisement/vacancy circular and issued a notification dispensing with the interview requirement, which was a part of the selection process for Group 'B' and 'C' posts. Instead, it prescribed allocation of additional marks for essential qualifications, additional qualifications, essential experience, and the written test.

5. The issue arising for consideration in the present case relates the allocation of marks for additional qualifications, for which 10 marks had been prescribed. The break-up of the 10 allocable marks is as under:

SL	Particulars		Marks
2.	Marks for Additional Qualifications (Maximum)		10
a	PG Diploma	5	
b	PG Degree	6	
c	MPhil/ Professional Qualification in the Field	7	
d	PhD	10	

6. It is evident from the above that a candidate possessing a Post Graduate Diploma and a Post Graduate Degree would be entitled to allocation of 5 and 6 marks respectively for their additional qualification. However, a person possessing an MPhil degree or a professional qualification in the field would be entitled to allocation of 7 marks for their additional qualification.

7. When the results were declared on 22.05.2017, the appellant got an aggregate of 57.5 marks, and respondent no. 3 got 58.25 marks. On enquiry, the appellant came to know that marks of respondent no.

3 are inclusive of the 7 marks that she was entitled to for holding the professional qualification of Masters in Education (M.Ed.). The appellant has no complaint against the allocation of 7 additional qualification marks to respondent no. 3. He was however surprised by the denial of 6 marks for the additional qualification of PG Degree that he held, on the ground that his PG Degree was not *"in the relevant subject".*

8. The appellant's simple case is that had he been allocated 6 marks for the PG Degree that he possessed, he would be the highest in the list by aggregating a total of 63.5 marks. Denial of 6 marks on a new ground that the PG Degree held by him is not *in the relevant subject*, he says, is illegal and arbitrary. He made a representation on 26.05.2017 for allocation of 6 marks. Due to inaction, he approached the Delhi High Court by way of a writ of mandamus to the Union and the Institute to remedy the injustice.

9. The learned Single Judge of the High Court refused to interfere by following the principle laid down in the judgment of this Court in *University Grants Commission* v. *Neha Anil Bobde (Gadekar)*,[3] where it was held that in academic matters, the qualifying criteria must be left to the discretion of the concerned institution. The appellant then preferred a Writ Appeal, and the Division Bench also followed the principle in *Neha Anil Bobde,* as reiterated in other decisions,[4] and held that *in academic matters, the interference of the Court should be minimum.* In para 13 of its judgment, the High Court also relied on Clauses 14 and 19 of the vacancy circular to hold that the Institute in any event reserves the right to shortlist applications as it considers appropriate. Thus, the appellant approached this Court in 2019 itself.

10. At the outset, we note that the procedure for selection was provided in the vacancy circular issued in March 2016. Instead of following the said procedure, the Institute chose to adopt a new method by its notification dated 27.04.2016, wherein it dispensed with the interview and prescribed the allocation of marks for additional qualifications. We make it clear at this very stage that the appellant has not challenged the variation in the original selection process of an interview and its

3 (2013) 10 SCC 519.

4 *Tamil Nadu Education Department Ministerial and General Subordinate Services Association v. State of Tamil Nadu* (1980) 3 SCC 97*; All India Council for Technical Education v. Surinder Kumar Dhawan* (2009) 11 SCC 726.

replacement with allocation of marks for additional qualifications. The only challenge is that the denial of 6 marks for the additional qualification of a PG Degree that he possesses is illegal and arbitrary. On the other hand, the respondents raised the standard defence by invoking Clauses 14 and 19 to submit that they have reserved the right of shortlisting candidates as is considered appropriate. They also submit that the appellant cannot be given the benefit of 6 marks for additional qualifications as he did not possess the PG Degree in the "relevant subject".

11. ***Analysis:*** The standard argument made consistently and successfully before the Single Judge and Division Bench must fail before us. Clauses 14 and 19 of the vacancy circular do nothing more than reserving flexibility in the selection process. They cannot be read to invest the Institute with unbridled discretion to pick and choose candidates by supplying new criteria to the prescribed qualification. This is a classic case of arbitrary action. The submission based on Clauses 14 and 19 must fail here and now.

12. The other submission of the respondent about restricting a *"PG Degree"* to a "*PG Degree in Relevant Subject*" must also be rejected. The illegality in adopting and applying such an interpretation is evident from a simple reading of the notification dated 27.04.2016 providing for additional qualifications. The additional qualifications provided under clauses 'a' to 'd' are under two categories. While 'a', 'b', and 'd' relating to PG Diploma, PG Degree, and PhD are general qualifications providing for 5, 6, and 10 marks respectively, the category under 'c' relates to Professional Qualification in the field. This is where specialization is prescribed. If we add the requirement of specialization to category 'b', i.e., PG Degree, then that category becomes redundant. The whole purpose of providing PG Degree independently and allocating a lesser quantum of 6 marks will be completely lost if such an interpretation is adopted. This can never be the purpose of prescribing distinct categories. No further analysis is necessary. We reject this submission also.

13. The Single Judge as well as the Division Bench did not really analyse the prescription of additional qualifications and the distinct marks allocated to each of them, but confined their decision to *restraint in judicial review* and dismissed the appellant's prayer. When a citizen alleges arbitrariness in executive action, the High Court must

examine the issue, of course, within the context of judicial restraint in academic matters. While respecting flexibility in executive functioning, courts must not let arbitrary action pass through. For the reasons stated above, we are of the opinion that the decisions of the Single Judge and the Division Bench are not sustainable, and we hereby set aside their judgments.

14. The story does not end here.

15. While reserving the judgment, we directed the respondents to file an additional affidavit with respect to the availability of a vacant position. Following the direction, respondents 1 and 2 have filed an affidavit. Paragraph 3 and 4 of the affidavit read as under:

> *"3. I state that the applications were invited to fill up the vacancy for Primary School Teacher at the Model Integrated Primary School [hereinafter the 'School'] which was run by the Respondent No. 2 Institute. The Petitioner and the Respondent had applied in the SC category for which there was single post. The School has been closed on 01.04.2023 with the approval of the 128th Standing Committee held on 13.05.2022 and 49th General Council held on 26.05.2022. I further state that the Respondent No. 3 who was select in pursuance of aforementioned application had joined the post of Primary Teacher on 02.04.2018 and has since resigned on 24.10.2019.*
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> *4. I therefore state that on account of the closure of the School, there is no vacancy in the post of Primary Teacher to which the Petitioner and the Respondent No. 3 had applied and which is the subject matter of the Special Leave Petition. The letter dated 13/14.12.2023 of the Pt. Deendayal Upadhyay National Institute for Persons with Physical Disabilities (Divyangjan) to the Ministry of Law and Justice is also annexed herewith for reference as Annexure A1."*

16. It is evident from the above that the school for which the advertisement was issued was closed on 01.04.2023. In view of the closure of the school, we cannot direct the respondent Institute to employ the appellant as a primary school teacher. This is an unfortunate situation where the Court finds that the action of the respondent was arbitrary, but the consequential remedy cannot be given due to

subsequent developments. One stark reality of the situation is the time that has passed between the order of 2018 impugned herein and the judgment that we pronounce in 2024.

17. Judicial review of administrative action in public law is qualitatively distinct from judicial remedies in civil law. In judicial review, constitutional courts are concerned with the exercise of power by the State and its instrumentalities.

18. Within the realm of judicial review in common law jurisdictions, it is established that constitutional courts are entrusted with the responsibility of ensuring the lawfulness of executive decisions, rather than substituting their own judgment to decide the rights of the parties, which they would exercise in civil jurisdiction.[5] It has been held that the primary purpose of quashing any action is to preserve order in the legal system by preventing excess and abuse of power or to set aside arbitrary actions. Wade on Administrative Law states that the purpose of quashing is not the final determination of private rights, for a private party must separately contest his own rights before the administrative authority.[6] Such private party is also not entitled to compensation merely because the administrative action is illegal.[7] A further case of tort, misfeasance, negligence, or breach of statutory duty must be established for such person to receive compensation.[8]

19. We are of the opinion that while the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures to restitute the injured is our overarching constitutional purpose. This is how we have read our constitutional text, and this is how we have built our precedents on the basis of our preambular objective to *secure* justice.[9]

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5 Sir Clive Lewis, *Judicial Remedies in Public Law* (5th edn, Sweet and Maxwell 2015).

6 HWR Wade and CF Forsyth, *Administrative Law* (11th edn, Oxford University Press 2014) 596-597.

7 Peter Cane, 'Damages in Public Law' (1999) 9(3) Otago Law Review 489.

8 Henry Woolf and others, *De Smith's Judicial Review* (8th edn, Sweet and Maxwell 2018) 1026-1027.

9 The Preambular goals are to secure Justice, Liberty, Equality, and Fraternity for all citizens.

20. In public law proceedings, when it is realised that the prayer in the writ petition is unattainable due to passage of time, constitutional courts may not dismiss the writ proceedings on the ground of their perceived futility. In the life of litigation, passage of time can stand both as an ally and adversary. Our duty is to transcend the constraints of time and perform the primary duty of a constitutional court to control and regulate the exercise of power or arbitrary action. By taking the first step, the primary purpose and object of public law proceedings will be subserved.

21. The second step relates to restitution. This operates in a different dimension. Identification and application of appropriate remedial measures poses a significant challenge to constitutional courts, largely attributable to the dual variables of *time* and *limited resources*.

22. The temporal gap between the impugned illegal or arbitrary action and their subsequent adjudication by the courts introduces complexities in the provision of restitution. As time elapses, the status of persons, possession, and promises undergoes transformation, directly influencing the nature of relief that may be formulated and granted.

23. The inherent difficulty in bridging the time gap between the illegal impugned action and restitution is certainly not rooted in deficiencies within the law or legal jurisprudence but rather in systemic issues inherent in the adversarial judicial process. The protracted timeline spanning from the filing of a writ petition, service of notice, filing of counter affidavits, final hearing, and then the eventual delivery of judgment, coupled with subsequent appellate procedures, exacerbates delays. Take for example this very case, the writ petition was filed against the action of the respondent denying appointment on 22.05.2017. The writ petition came to be decided by the Single Judge on 24.01.2018, the Division Bench on 16.10.2018, and then the case was carried to this Court in the year 2019 and we are deciding it in 2024. The delay in this case is not unusual, we see several such cases when our final hearing board moves. Appeals of more than two decades are awaiting consideration. It is distressing but certainly not beyond us. We must and we will find a solution to this problem.

24. It is in this reality and prevailing circumstance that we must formulate an appropriate system for preserving the rights of the parties till the final determination takes place. In the alternative, we may also

formulate a reasonable equivalent for restitution of the wrongful action.

25. Returning to the facts of the present case, in exercise of our primary duty, we have set aside the action of the respondents as being illegal and arbitrary. In furtherance of our duty to provide a reasonable measure for restitution, we have explored the possibility of directing the Institute to appoint the appellant as a primary teacher in any other school run by them. However, it seems that the only primary school run by the Institute is the one for which they sought to fill vacancies and it is closed since 2023. In this situation, we must consider an alternative restitutory measure in the form of monetary compensation.

26. We appreciate the spirit of the appellant who has steadfastly contested his case like the legendary *Vikram,*[10] from the year 2017 when he was illegally denied the appointment by the executive order dated 22.05.2017, which we have set aside as being illegal and arbitrary. In these circumstances, we direct the Institute (respondent no. 2) to pay an amount of Rs. 1,00,000/- as compensation. This amount shall be paid to the appellant within a period of six weeks from the date of passing of this order.

27. For the reasons stated above, we allow the appeal and set aside the judgment of the High Court in W.P. (C) No. 5279 of 2017 and C.M. No. 22382 of 2017 dated 24.01.2018 and in L.P.A. No. 158 of 2018 dated 16.10.2018 and direct the Institute (respondent no. 2) to pay Rs. 1,00,000/- as a compensation with cost quantified at Rs. 25,000/-.

Headnotes prepared by: Ankit Gyan

Result of the case: Appeal allowed.

10 Against Betala, in the famous Vetalapancavimsati, the original being the Kathasaritsagara work of the 11th Century by Somadeva.